



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50 -22
Regulation title	Board for Contractors Regulations
Action title	Amendment to add pre-license education
Date this document prepared	May 23, 2006

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an "emergency situation" as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

1) Chapters 454 and 475 of the Acts of the General Assembly, approved March 31, 2006, require that the Board for Contractors (The Board) promulgate regulations mandating the successful completion of a Board approved business class as a prerequisite for contractor licensure within 280 days of the enactment of the legislation.

2) This amendment to the existing regulations will add the pre-license education requirement to the entry section for each class of contractor license and will create a new section containing the eligibility requirements for pre-license education providers and pre-license education courses.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapters 454 and 475 of the Acts of the General Assembly require that the Board promulgate regulations adding pre-license education to the eligibility criteria for licensure as a contractor.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is determined at the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In order to protect the public from inexperienced, irresponsible or incompetent contractors, the Commonwealth initiated the licensing of those performing work in the construction industry in 1938. The purpose of amending these regulations is to add a requirement that a member of Responsible Management or the Designated Employee of an applicant successfully complete a business education course as a prerequisite for licensure as a contractor. The implementation of this requirement and the amendment to the regulations should result in a decrease of violations of the standards of conduct set forth in the Board’s Regulations.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The General Assembly determined that the proposed regulatory action is essential to protect the health, safety, or welfare of the citizens in Virginia, and the Board’s data affirm this. Since January 2003, the Board has adjudicated nearly 1600 disciplinary cases, the majority of which resulted from consumer complaints. Nearly two-thirds of the violations in those cases involve disciplinary actions that could have been prevented with proper pre-license education. These violations include, but are not limited to, contracts missing language required by the regulations, failure to use a change order when amending a contract, failure to pull a building permit, failure to keep records for the required amount of time and not using properly licensed subcontractors. Violating these provisions of the regulations adversely affect the licensee and the consumer. A sample of disciplinary case files shows that in many instances the licensee was simply not aware of the details of the regulations’ standards of conduct. Educating contractors as a prerequisite for licensure should reduce the number of violations, which would benefit regulants and consumers.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 50-22-40		Lists requirements for entry as a Class C contractor.	Amended to include paragraph (F) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
18 VAC 50-22-50		Lists requirements for entry as a Class B contractor.	Amended to include paragraph (H) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
18 VAC 50-22-60		Lists requirements for entry as a Class A contractor.	Amended to include paragraph (H) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
	18 VAC 50-22-300		Adds new Part VI (Pre-license Education) to the regulations. This first section to the new part provides that all pre-license education courses must be approved by the Board for Contractors (The Board), be at least eight hours long and cover business principles addressed in the standards of conduct or other sections of the regulations dealing with continued licensing. The “Prohibited Acts” set forth in 18 VAC 50-22-260.B of the regulations contain a number of “business” related issues that are common violations in disciplinary cases brought before the Board.

			<p>Since 2003, more than 66% of the regulatory violations adjudicated by the board include items that could be easily identified in pre-license education courses. Violations for failure to include required information in a contract, essential for both regulant and consumer protection, occur in nearly 50% of all cases. Other violations involve record keeping, properly amending contracts, use of unlicensed subcontractors, the misapplication of funds paid by a consumer, failure to obtain building permits and other related activities. A reduction of 25% of those violations, a reasonable expectation from the implementation of pre-license education, would reduce the Board's disciplinary caseload by 100 cases per year. That would result in a reduction of one to two board meetings per year with a direct cost savings of about \$5000. Additionally, Virginia consumers would benefit from experiencing business transactions that adhered to the Board's standards.</p>
	18 VAC 50-22-310		<p>Identifies the information that must be included in an application for approval sent to the Board for Contractor from a prospective course provider. This information is primarily demographic and used to maintain the approved education provider database. Other information is gathered to set a record keeping baseline to ensure that the course is presented as approved.</p> <p>Requirements are also established for record keeping by the approved provider. This is essential to ensure proper documentation and validation of individuals who have completed the course.</p>
	18 VAC 50-22-320		<p>Sets forth the requirement that providers must notify the Board of course completion in an electronic format within a mandated period of time. Electronic reporting is a well established method of transmittal used by the Board for examination results and by other regulatory boards for the reporting of pre-license and continuing education.</p> <p>The seven day time requirement is also used by other regulatory boards. It is essential to establish a time requirement to ensure that information is received in a timely basis. Failure to receive information in a timely manner will result in a delay in the application review time, which could harm the applicant.</p>
	18 VAC 50-22-330		<p>Establishes the requirement that all course providers must ensure that certificates of</p>

			approval be available at the location a course is taught. This provides another layer of protection for the licensee who, in this particular instance is a consumer, to ensure that the course he is about to take has actually been approved by the Board.
	18 VAC 50-22-340		Requires that any changes to the information provided to the Board that resulted in the approval of the course must be reported to the Board within a specified period of time.
	18 VAC 50-22-350		Establishes that the Board may deny an application for approval of a provider or withdraw approval of an existing provider for cause. These causes include instances where a provider advertises fraudulently, provides false information or offers a course that no longer meets the standards set by the Board.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

The statutes are explicit in requiring that a pre-license education program be implemented within 280 days of the law’s enactment. The Board has developed training programs for its own individual license and certificate holders and has reviewed the pre-license education processes currently used by other regulatory boards within the Department of Professional and Occupational Regulation. The Board will use this experience and knowledge in the implementation of its pre-license education program to ensure that it is cost-effective and not burdensome to the affected regulants.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected

small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, fax or email to Eric Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, Virginia 23230, fax to (804) 367-2474, email to contractor@dpwr.virginia.gov. Written comments must include the name and address of the commenter. Comments must be received by the last day of the public comment period to be considered.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board will use the participatory approach to develop a proposal if it receives at least 15 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these proposed regulations will have any affect on the institution of the family or family stability in Virginia.